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Siow Chung Peng v Public Prosecutor

FEDERAL COURT (PUTRAJAYA) — CRIMINAL APPLICATION NO 07–20 OF 2013
ZULKEFLI CJ (MALAYA), ZAINUN ALI, JEFFREY TAN, APANDI ALI AND RAMLY ALI FCJJ
13 JANUARY 2014

Criminal Procedure — Jurisdiction — Criminal jurisdiction — Applicant charged in sessions court for abetment — Offence under s 122C of the Securities Industry Act 1983 — Application to strike out/quash/permanently stay charge in High Court and Court of Appeal unsuccessful — Appeal to Federal Court — Whether applicant had standing to make application to the Federal Court since matter originated from subordinate court — Whether application for leave to file appeal known in law — Whether there was provision for grant of leave to appeal in criminal matter — Courts of Judicature Act 1964 s 87(1)

In the sessions court, the applicant was charged for abetting one Goh Hock Choy, who caused to be created a misleading appearance of active trading shares on a stock market in a company known as Lii Hen Industries Bhd, an offence under s 84(1) read together with s 122C of the Securities Industry Act 1983. Before commencement of the trial, the applicant filed notice of motion at the High Court to strike out/quash/permanently stay the charge on the ground that the applicant was a 'whistle blower' who was entitled to immunity and protection under the Whistleblower Act 2010. The High Court dismissed the motion and an appeal to the Court of Appeal proved futile. Hence, the present appeal. In opposing the present appeal, the prosecution submitted that the applicant had no standing to make an application to the Federal Court as the matter originated from a subordinate court; and that the application for leave to file an appeal was 'unknown in law' as there was no provision in s 87(1) of the Courts of Judicature Act 1964 ('the CJA') for the grant of leave to appeal in a criminal matter.

Held, dismissing the appeal:

(1) The original criminal jurisdiction of the High Court is as stipulated in s 22 of the CJA. In effect, s 87(1) of the CJA provides that the Federal Court 'shall have jurisdiction to hear and determine any appeal from any decision of the Court of Appeal in its appellate jurisdiction in respect of any criminal matter decided by the High Court' in pursuance of s 22 of the same Act. Section 87(1) must be read as a whole. For the Federal Court to have jurisdiction to hear and determine an appeal from any decision of the Court of Appeal, two preconditions must be met: the

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decision of the Court of Appeal was in its appellate jurisdiction in respect of the criminal matter; and the criminal matter was decided by the High Court in its original jurisdiction. The original criminal jurisdiction of the High Court, as stipulated in s 22 of the CJA, is the jurisdiction to try offences (see paras 11 & 12).

(2) In the instant case, the High Court was not the trial court and not being the trial court, the High Court could not have decided the criminal matter in pursuance of s 22 or in other words, in its original criminal jurisdiction. An appeal could only reach the Federal Court via the Court of Appeal, if the criminal matter were decided by the High Court as the trial court. The jurisdiction to try the offence was entrusted to the sessions court. Since the High Court was not the trial court trying the offence and there was no provision to permit an appeal of a criminal matter that emanated from a subordinate court to the Federal Court, this application for leave to appeal, beside being unknown in law and so could not be granted and in any event, was an absolute non-starter (see paras 12 & 19).

[Bahasa Malaysia summary

Di mahkamah sesyen, pemohon telah dituduh bersubahat dengan Goh Hock Choy, yang menyebabkan wujudnya penampilan yang mengelirukan saham urus niaga aktif di pasaran saham dalam syarikat yang dikenali sebagai Lii Hen Industries Bhd, satu kesalahan di bawah s 84(1) dibaca bersama s 122C Akta Industri Sekuriti 1983. Sebelum perbicaraan bermula, pemohon telah memfailkan notis usul ke Mahkamah Tinggi untuk membatal/mematah/menggantung terus pertuduhan atas alasan bahawa pemohon adalah 'pemberi maklumat' yang berhak mendapat imuniti dan perlindungan di bawah Akta Pemberi Maklumat 2010. Mahkamah Tinggi telah menolak usul itu dan rayuan ke Mahkamah Rayuan terbukti sia-sia. Justeru, rayuan ini dibuat. Dalam membantah rayuan ini, pihak pendakwaan berhujah bahawa pemohon tiada pendirian untuk membuat permohonan ke Mahkamah Persekutuan kerana perkara itu berasal dari mahkamah rendah; dan bahawa permohonan untuk kebenaran memfailkan rayuan adalah 'unknown law' kerana tiada peruntukan dalam s 87(1) Akta Mahkamah Kehakiman 1964 ('AMK') untuk pemberian kebenaran untuk merayu dalam perkara jenayah.

Diputuskan, menolak rayuan:

(1) Bidang kuasa jenayah asal Mahkamah Tinggi adalah sebagaimana ditetapkan dalam s 22 AMK. Ia berkuat kuasa, s 87(1) AMK memperuntukkan bahawa Mahkamah Persekutuan 'shall have jurisdiction to hear and determine any appeal from any decision of the Court of Appeal in its appellate jurisdiction in respect of any criminal matter decided by the High Court' menurut s 22 Akta sama. Seksyen

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87(1) perlu dibaca secara keseluruhan. Mahkamah Persekutuan mempunyai bidang kuasa untuk mendengar dan menentukan rayuan daripada mana-mana keputusan Mahkamah Rayuan, dua prasyarat perlu dipenuhi: keputusan Mahkamah Rayuan adalah berdasarkan bidang kuasa rayuannya berkaitan perkara jenayah; dan perkara jenayah telah diputuskan oleh Mahkamah Tinggi dalam bidang kuasa asalnya. Bidang kausa jenayah asal Mahkamah Tinggi, sebagaimana dinyatakan dalam s 22 AMK, adalah bidang kuasa untuk membicarakan kesalahan-kesalahan (lihat perenggan 11 & 12).

(2) Dalam kes ini, Mahkamah Tinggi bukan mahkamah perbicaraan dan oleh kerana bukan mahkamah perbicaraan, Mahkamah Tinggi tidak boleh memutuskan perkara jenayah menurut s 22 atau dalam erti kata lain, dalam bidang kuasa jenayah asalnya. Suatu rayuan hanya boleh tiba ke Mahkamah Persekutuan melalui Mahkamah Rayuan, jika perkara jenayah itu diputuskan oleh Mahkamah Tinggi sebagai mahkamah perbicaraan. Bidang kuasa untuk membicarakan kesalahan dipertanggungjawabkan ke mahkamah sesyen. Oleh kerana Mahkamah Tinggi bukan mahkamah perbicaraan yang membicarakan kesalahan dan tiada peruntukan untuk membenarkan rayuan untuk perkara jenayah yang berasal dari mahkamah rendah ke Mahkamah Persekutuan, permohonan untuk kebenaran merayu ini, selain daripada tidak dikenali di sisi undang-undang dan oleh itu tidak dapat diberikan dan dalam apa keadaan, tidak boleh dimulakan langsung (lihat perenggan 12 & 19).]

Cases referred to

Ang Cheng Hai & Ors v PP and another appeal [1995] 3 SLR 201, CA (refd)
Bachoo Mohan Singh v PP and another application [2010] 1 SLR 966, CA (refd)
Dato Mohamed Hashim Shamsuddin v Attorney-General, Hongkong [1986] 2 MLJ 112, SC (refd)
Datuk Yong Teck Lee & Ors v PP [1996] 2 MLJ 68, CA (refd)
Karpal Singh & Anor v PP [1991] 2 MLJ 544, SC (refd)
Karpal Singh a/l Ram Singh v PP [2012] 5 MLJ 293; [2012] 5 CLJ 537, FC (refd)
Microsoft Corporation & Ors v SM Summit Holdings & Anor [2000] 2 SLR 137, CA (refd)
Munawar Ahmad Anees v PP [2010] 3 MLJ 285, FC (refd)
Munusamy v Subramaniam & Ors [1969] 2 MLJ 108 (refd)
Ng Chye Huey and another v PP [2007] 2 SLR 106, CA (refd)
PP v Lee Tin Bau [1985] 1 MLJ 388 (refd)
Sia Cheng Soon & Anor v Tengku Ismail bin Tengku Ibrahim [2008] 3 MLJ 753, FC (refd)
Tan Sri Eric Chia Eng Hock v PP (No 1) [2007] 2 MLJ 101, FC (refd)
Tengku Abdul Muiz Shah & Ors v PP [1983] 1 MLJ 422 (refd)

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A *Wong Kim Woon v PP* [1999] 5 MLJ 114, HC (refd)

Legislation referred to

Courts of Judicature Act 1964 ss 3, 22, 22(1), 23, 24, 25, 30, 87(1)
Criminal Procedure Code s 185
B Securities Industry Act 1983 ss 84(1), 122C
Supreme Court of Judicature Act (Cap 322) [SG] ss 15, 29A(2)

Amer Hamzah Arshad (Nizam Bashir & Amer Hamzah) for the appellant.
Armadajaya bin Awang Mahmud (Deputy Public Prosecutor, Attorney General's
C *Chambers) for the respondent.*

Jeffrey Tan FCJ (delivering judgment of the court):

D **[1]** On 13 January 2014, we unanimously dismissed the applicant's application ('the application') for leave to file a notice of appeal to this court. We now give our reasons.

E **[2]** Briefly stated, the applicant was charged at the Kuala Lumpur Sessions Court for the following offence under s 84(1) read together with s 122C of the Securities Industry Act 1983:

> That you, between 26 March 2004 and 28 October 2004 at Bursa Malaysia Securities Berhad, 14th Floor, Exchange Square, Bukit Kewangan, 50250 Kuala
F Lumpur, abetted Goh Hock Choy (NRIC No 621010-05-5331) who caused to be created a misleading appearance of active trading in Lii Hen Industries Bhd (Company No: 301361-U) shares on a stock market, that is, Bursa Malaysia Securities Bhd, where Goh Hock Choy was indirectly concerned in transactions of sale and purchase of Lii Hen Industries Berhad shares that did not involve any change in the beneficial ownership of the said Lii Hen Industries Berhad shares,
G executed through the central depository securities accounts listed in the Appendix to this charge, and the said offence was committed pursuant to your abetment and you have thereby committed an offence under s 84(1) read together with s 122C(c) of the Securities Industry Act 1983 (Act 280), punishable under s 88B of the same Act.

H **[3]** But before trial could commence, the applicant filed a notice of motion ('the motion') at the High Court to strike out/quash/permanently stay the charge. The main ground for the motion was that the applicant was a 'whistle-blower' who was entitled therefore to the immunity and protection under the Whistleblower Act 2010. On 5 February 2013, the High Court
I dismissed the motion. The applicant appealed. On 13 September 2013, the Court of Appeal dismissed the appeal. The applicant promptly lodged a notice of appeal against the decision of the Court of Appeal. But on 27 September 2013, the applicant was notified by the registry of this court that the said notice of appeal could not be processed, and which notice of appeal was then returned

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to the applicant, by reason of s 87(1) of the Courts of Judicature Act 1964 ('the CJA'), which provides:

> (1) The Federal Court shall have jurisdiction to hear and determine any appeal from any decision of the Court of Appeal in its appellate jurisdiction in respect of any criminal matter decided by the High Court in its original jurisdiction subject to any rules regulating the proceedings of the Federal Court in respect of appeals from the Court of Appeal.

[4] In other words, s 87(1) of the CJA provides that the Federal Court shall have jurisdiction to hear and determine any appeal from any decision (as defined in s 3 of the CJA) of the Court of Appeal if the criminal matter were decided (to follow the meaning of 'decision' as defined in s 3 of the CJA) by the High Court in its original jurisdiction. Otherwise, '… there is no right of appeal to the Federal Court in a criminal matter that originated in the subordinate courts' (*Tan Sri Eric Chia Eng Hock v Public Prosecutor (No 1)* [2007] 2 MLJ 101 per Augustine Paul FCJ). 'This section … does not provide for appeals in criminal matters originating in the subordinate courts' (*Sia Cheng Soon & Anor v Tengku Ismail bin Tengku Ibrahim* [2008] 3 MLJ 753 per Zaki Azmi PCA, as he then was). 'In a criminal matter which originated from the sessions court, as in this case, the Court of Appeal stands as the apex court. No further appeal shall lie to the Federal Court. The appeal should stop at the Court of Appeal' *Munawar Ahmad Anees v Public Prosecutor* [2010] 3 MLJ 285 per Raus Sharif FCJ, as he then was).

[5] The learned deputy public prosecutor hence submitted that the applicant had no standing to make the application to the Federal Court, as the matter originated from a subordinate court. The other substantive point made by the learned DPP was that the application for leave to file an appeal was 'unknown in law' as there was no provision in s 87(1) for the grant of leave to appeal in a criminal matter.

[6] Learned counsel for the applicant argued that the motion was first considered by the High Court who could not therefore have exercised appellate or revisionary jurisdiction, and that the motion could only be heard by the High Court, as only the High Court had the inherent jurisdiction to hear and dispose the motion. To support the argument that only the High Court could decide on the motion and that the High Court exercised original jurisdiction, learned counsel for the applicant referred to (a) *Karpal Singh a/l Ram Singh v Public Prosecutor* [2012] 5 MLJ 293; [2012] 5 CLJ 537, where it was held by the Federal Court per Suriyadi FCJ, delivering the judgment of the court, that 'original jurisdiction generally means that the High Court considered the matter in the first instance as opposed to its appellate jurisdiction over a matter heard in the first instance by a court below', (b) *Public Prosecutor v Lee Tin Bau* [1985] 1 MLJ 388, at p 194, where it was held by Gunn Chit Tuan J, as he then

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was, that a court has the power to intervene where there is evidence that there is mala fide on the part of the prosecution which amount to an abuse of the process of court and is oppressive and vexatious, and (c) *Karpal Singh & Anor v Public Prosecutor* [1991] 2 MLJ 544 at 548–549 where it was held by the former Supreme Court per Abdul Hamid Omar LP, delivering the judgment of the court, that 'There is no provision in the Code for striking out proceedings or acquittal without hearing all evidence the prosecution has the capacity to offer, even though postponements are needed. If any party feels that the charge and consequent proceedings are illegal on the face of the record, which we feel is rare, his remedy is to take up appropriate proceedings before a High Court to quash the charge and the whole proceedings producing evidence to the satisfaction of the trial judge to adopt such a case. *It is absurd and against common sense to believe that the legislature ever expected members of subordinate judiciary to exercise such vast powers, trespassing into the public prosecutor's area … our considered opinion is that the English doctrine of inherent jurisdiction is hardly applicable in the subordinate courts* but the High Court may invoke such prerogative powers in rare instances where it is right to do justice to the accused'. (Emphasis added.)

[7] Indeed, *Karpal Singh & Anor v Public Prosecutor* [1991] and *Datuk Yong Teck Lee & Ors v Public Prosecutor* [1996] 2 MLJ 68 as well 'are authorities for the general proposition that the subordinate courts do not have inherent jurisdiction' (*Wong Kim Woon v Public Prosecutor* [1999] 5 MLJ 114 per Abdul Wahab J, as he then was) to quash a charge or to acquit an accused on the charges preferred without hearing the evidence in support. Hence, procedure-wise, the motion to strike out/quash/permanently stay the charge was rightly instituted at the High Court who heard the motion at first instance. Since it was heard and disposed at first instance by the High Court, then it should only follow that the motion could not have been decided by the High Court in its appellate or revisionary jurisdiction. But would it also follow that since the motion could not have been decided by the High Court in its appellate and or revisionary jurisdiction, that the motion could only have been decided by the High Court in its original jurisdiction, as contended by the applicant? Perhaps, that would follow if it is provided that jurisdiction is original if it is not appellate and or revisionary. But with respect, the original jurisdiction of the High Court is not whatever that is not appellate and or revisionary. The original jurisdiction of the High Court is not vague. Rather, the original jurisdiction of the High Court is stipulated with exactitude in ss 22–25 of the Courts of Judicature Act 1964 (CJA) (see *Tan Sri Eric Chia Eng Hock v Public Prosecutor (No 1)* where Richard Malanjum CJ (Sabah and Sarawak) observed that ss 22–25 of the CJA stipulate what are the original jurisdictions of the High Court):

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Section 22 of the CJA stipulates:

(1) The High Court shall have jurisdiction to try —

(a) all offences committed —

(i) within its local jurisdiction;

(ii) on the high seas on board any ship or on any aircraft registered in Malaysia;

(iii) by any citizen or any permanent resident on the high seas on board any ship or on any aircraft;

(iv) by any person on the high seas where the offence is piracy by the law of nations; and

(b) offences under Chapters VI and VI A of the Penal Code, and under any of the written laws specified in the Schedule to the Extra-Territorial Offences Act 1976, or offences under any other written law the commission of which is certified by the Attorney General to affect the security of Malaysia committed, as the case may be —

(i) on the high seas on board any ship or on any aircraft registered in Malaysia;

(ii) by any citizen or any permanent resident on the high seas on board any ship or on any aircraft;

(iii) by any citizen or any permanent resident in any place without and beyond the limits of Malaysia;

(iv) by any person against a citizen of Malaysia;

(v) by any person against property belonging to the Government of Malaysia or the Government of any State in Malaysia located outside Malaysia, including diplomatic or consular premises of Malaysia;

(vi) by any person to compel the Government of Malaysia or the Government of any State in Malaysia to do or refrain from doing any act;

(vii) by any stateless person who has his habitual residence in Malaysia;

(viii) by any person against or on board a fixed platform while it is located on the continental shelf of Malaysia; or

(ix) by any person who after the commission of the offence is present in Malaysia.

(2) The High Court may pass any sentence allowed by law.

[8] When the CJA was passed in 1964, s 22 was enacted to provide for the

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A original criminal jurisdiction of the High Court (see *Munusamy v Subramaniam & Ors* [1969] 2 MLJ 108, where Abdul Hamid Omar J, as he then was, imparted the following history of s 22: 'In 1946, under the Malayan Union Government, the Courts Ordinance, 1946 was enacted establishing the constitution and powers of the civil and criminal courts with substantially the same powers as were formerly exercised in the territories included in the Malayan Union. With the establishment of a Federation under the 1948 Federation of Malaya Agreement, the Courts Ordinance, 1948 was passed which consolidated the law relating to the constitution and powers of the civil and criminal courts throughout the Federation. The Unfederated Malay States Courts Enactments, including the F.M.S Courts Enactment (Cap. 2), were repealed. Under section 47 of the Courts Ordinance 1948, the original civil jurisdiction of the High Court was substantially the same as that provided under F.M.S Courts Enactment (Cap. 2). In 1964, however, the Courts of Judicature Act was passed. *Provision for the original criminal jurisdiction (section 22), original civil jurisdiction (section 23) and other powers of the High Court (section 25) was made'*.) (Emphasis added.)

[9] That s 22 of the CJA is the embodiment of the original criminal jurisdiction of the High Court was also said in *Tengku Abdul Muiz Shah & Ors v Public Prosecutor* [1983] 1 MLJ 422 per Mohamed Dzaiddin J, as he then was:

> Except for certain Articles in the Constitution (See Articles 121, 122A, 122B, 122C; 123; 126.), the powers and jurisdiction of the High Court are governed by the Courts of Judicature Act 1964. In the sphere of criminal jurisdiction, the High Court has three jurisdictions, namely, original, appellate and revisionary. With regard to its original jurisdiction, section 22(1)(a)(i) of the Act states that the High Court shall have jurisdiction to try all offences committed within its local jurisdiction. Under section 3 of the Act, local jurisdiction means 'in the case of the High Court in Malaya, the territory comprised in the States of Malaya, namely, Johore, Kedah, Kelantan, Malacca, Negeri Sembilan, Pahang, Penang, Perak, Perlis, Selangor and Terengganu.

[10] The former Supreme Court per Salleh Abas LP, delivering the judgment of the court, in *Dato Mohamed Hashim Shamsuddin v Attorney-General, Hongkong* [1986] 2 MLJ 112 also affirmed that s 22 of the CJA relates to the original criminal jurisdiction of the High Court:

> In the sphere of criminal jurisdiction, the High Court has three jurisdictions, namely, original, appellate and revisionary. With regard to its original jurisdiction, section 22(1)(a)(i) of the Act states that the High Court shall have jurisdiction to try all offences committed within its local jurisdiction.

[11] There could not be any question about it. The original criminal jurisdiction of the High Court is as stipulated in s 22 of the CJA. And when

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interpolated, 'section 22 of the CJA' in place of 'in its original jurisdiction', s 87(1) of the CJA reads:

> (1) The Federal Court shall have jurisdiction to hear and determine any appeal from any decision of the Court of Appeal in its appellate jurisdiction in respect of any criminal matter decided by the High Court (in pursuance of section 22) subject to any rules regulating the proceedings of the Federal Court in respect of appeals from the Court of Appeal.

[12] In effect, s 87(1) of the CJA provides that the Federal Court 'shall have jurisdiction to hear and determine any appeal from any decision of the Court of Appeal in its appellate jurisdiction in respect of any criminal matter decided by the High Court' in pursuance of s 22. That s 87(1) must be read as a whole. For the Federal Court to have jurisdiction to hear and determine an appeal from any decision of the Court of Appeal, two preconditions must be met: (a) the decision of the Court of Appeal was in its appellate jurisdiction in respect of the criminal matter; and, (b) the criminal matter was decided by the High Court in its original jurisdiction. As said, the original criminal jurisdiction of the High Court is as stipulated in s 22 of the CJA, which is the jurisdiction to try offences. But in the instant case, the High Court was not the trial court. And not being the trial court, the High Court could not have decided the criminal matter in pursuance of s 22 or in other words, in its original criminal jurisdiction. This is to say that an appeal could only reach the Federal Court via the Court of Appeal, if the criminal matter were decided by the High Court as the trial court. The same conclusion was reached by courts in Singapore with respect to the corresponding sections of the Supreme Court of Judicature Act, wherein ss 15 and 29A(2) read:

> Section 15
>
> (1) The High Court shall have jurisdiction to try all offences committed —
>
> (a) within Singapore;
>
> (b) on board any ship or aircraft registered in Singapore;
>
> (c) by any person who is a citizen of Singapore on the high seas or on any aircraft;
>
> (d) by any person on the high seas where the offence is piracy by the law of nations;
>
> (e) by any person within or outside Singapore where the offence is punishable under and by virtue of the provisions of the Hijacking of Aircraft and Protection of Aircraft and International Airports Act (Cap. 124) or the Maritime Offences Act (Cap. 170B); and
>
> (f) in any place or by any person if it is provided in any written law that the offence is triable in Singapore.
>
> (2) The High Court may pass any sentence allowed by law.

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Section 29A(2)

> The criminal jurisdiction of the Court of Appeal shall consist of appeals against any decision made by the High Court in the exercise of its original criminal jurisdiction, subject nevertheless to the provisions of this Act or any other written law regulating the terms and conditions upon which such appeals may be brought.

[13] In *Ang Cheng Hai & Ors v Public Prosecutor and another appeal* [1995] 3 SLR 201, the appellants were charged in the subordinate courts for an offence under the Undesirable Publications Act. The appellants applied under s 185 of the Criminal Procedure Code for the proceedings to be transferred and tried in the High Court. The High Court dismissed the motions. The appellants appealed. The question was whether they had a right of appeal. Counsel for the appellants submitted that the High Court was acting in the exercise of its original criminal jurisdiction in hearing the application pursuant to s 185 of the CPC, and that accordingly, the Court of Appeal had jurisdiction to hear the appeal, having regard to s 29A(2) of the Supreme Court of Judicature Act (Cap 322) ('the SCJA'). The prosecution contended that the Court of Appeal was only empowered to hear appeals in criminal cases against orders of finality, that the High Court was not exercising its trial jurisdiction, and thus no right of appeal lay to the Court of Appeal.

[14] On whether the High Court had exercised its original jurisdiction, Karthigesu JA, delivering the judgment of the court, first held that s 15 of the SCJA specifies the original criminal jurisdiction of the High Court:

> The CPC is silent as to any question of appeal against a decision of the High Court made under s 185 of the CPC. The appellants' only recourse was to attempt to bring themselves within the ambit of s s 29A(2) of the SCJA, which they sought to do.
>
> It may be helpful to set out first the various heads of criminal jurisdiction which the SCJA confers on the High Court. Section 3(a) of the SCJA provides that the High Court shall exercise original and appellate criminal jurisdiction. Sections 15 and 19 of the SCJA specify the scope of the High Court's original criminal trial jurisdiction and appellate criminal jurisdiction respectively. Finally, s 27 of the SCJA clothes the High Court with general supervisory and revisionary jurisdiction over all subordinate courts.

[15] His Lordship then expounded on the original jurisdiction of the High Court, the exercise of trial jurisdiction and the right of appeal under the SCJA:

> The concept of 'original jurisdiction' has been defined to mean 'jurisdiction to consider a case in the first instance ... to take cognizance of a cause at its inception, try it and pass judgment upon the law and facts': *Black's Law Dictionary* (6th Ed). In *Wong Hong Toy & Anor v Public Prosecutor* [1986] 2 MLJ 336 (CCA); [1986] 1 MLJ 453 (HC), the Court of Criminal Appeal observed (at p 457):
>
> > The all-embracing original criminal jurisdiction of the High Court under s 15 of

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> the Supreme Court of Judicature Act is not in all cases exercised by the High Court but the administration of criminal justice in respect of what we may call the less serious criminal cases, generally those cases not involving the sentence of death or life imprisonment, is entrusted to the subordinate courts. The exercise of the original criminal jurisdiction of the High Court involves generally the more serious criminal cases or such less serious criminal cases as may be transferred from the subordinate courts to the High Court.

It is implicit from the above dicta that 'original jurisdiction' refers to original trial jurisdiction. In respect of the High Court, its original criminal jurisdiction is enumerated under s 15 of the SCJA, which denotes its trial jurisdiction. For this reason, the dictum of Coomaraswamy J did not assist the appellants. In the present cases, as the prosecution rightly pointed out, there was no trial which had commenced in the High Court. The High Court had not yet taken cognizance of the offences in question. The only matters before the High Court were the applications under s 185 of the CPC. We recognised that both the magistrate's court and the High Court may have been jurisdictionally competent to try the offences in question. Nevertheless, the proceedings had been validly commenced in a magistrate's court, which had properly taken cognizance of the offences and had proceeded to exercise original criminal jurisdiction.

We turned to consider the prosecution's submissions. Sections 29A(2) and 44 of the SCJA are the key provisions relating to the criminal jurisdiction of the Court of Appeal. While s 44(1) of the pre-existing SCJA may have been deleted and recast as s 29A(2) of the SCJA , the remaining sub-ss (2) to (5) in s 44 have been retained without any amendment. This clearly indicates that the reasoning and conclusion of the Court of Appeal in *Mohamed Razip bin Fadzillah v Public Prosecutor* [1988] 1 MLJ 84 remain applicable. Accordingly, we agreed with the prosecution's submission that the Court of Appeal is generally empowered only to entertain appeals which are concerned with orders of finality, ie those resulting in conviction and sentence or acquittal. On this premise, Rubin J's decision did not give rise to a right of appeal.

[16] *Ang Cheng Hai* was followed in *Microsoft Corporation & Ors v SM Summit Holdings & Anor* [2000] 2 SLR 137, where it was similarly held by the Court of Appeal per LP Thean JA, delivering the judgment of the court, that the words 'original criminal jurisdiction' in s 29A(2) of the SCJA refer to 'trial jurisdiction':

> Following these decisions, we are of the opinion, the words 'original criminal jurisdiction' in s 29A(2) of the SCJA, on the true construction, refer to 'trial jurisdiction' and the decision of the learned Chief Justice in refusing to release or vary the implied undertaking was not an order made in exercise of the original criminal jurisdiction of the High Court within the meaning of s 29A(2) of the SCJA. Therefore, no appeal lies from that order and this court has no jurisdiction to hear these appeals.

[17] In *Ng Chye Huey and another v Public Prosecutor* [2007] 2 SLR 106,

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Andrew Phang JA, delivering the judgment of the court, thus evaluated and agreed with *Ang Cheng Hai*:

> According to the Singapore Court of Appeal decision of *Ang Cheng Hai v Public Prosecutor* [1995] 3 SLR 201 at 205, [18], the scope of the High Court's 'trial' — and therefore its 'original criminal' — jurisdiction is set out in s 15 of the SCJA. Sections 15(1) and 15(2) of the SCJA variously provide that the High Court is to have jurisdiction to 'try offences' and 'pass sentence allowed by law'. These provisions make it clear beyond all doubt that Choo J's decision did not fall within the ambit of the High Court's 'original criminal jurisdiction' under s 29A(2) of the SCJA. The original criminal jurisdiction to 'try' and 'sentence' the applicants was, in the present case, being exercised by the subordinate court instead.

[18] And in *Bachoo Mohan Singh v Public Prosecutor and another application* [2010] 1 SLR 966, VK Rajah JA, delivering the judgment of the court, pronounced '... it is clear that the phrase 'original criminal jurisdiction' (in s 29A(2) of the SCJA) refers to the trial jurisdiction of the High Court'.

[19] The words of a statute are to be construed, *noscitur a sociis*, in the light of their context. 'Original jurisdiction' is clearly not 'jurisdiction first exercised'. Under the CJA, 'original criminal jurisdiction' is the jurisdiction to try offences, with s 30 of the CJA as the exception. The key words in s 22(1) of the CJA are 'jurisdiction to try'. In the instant case, that jurisdiction to try the offence was entrusted to the sessions court. Since the High Court was not the trial court trying the offence and there was no provision to permit an appeal of a criminal matter that emanated from a subordinate court to the Federal Court, this application for leave to appeal, beside being unknown in law and so could not, nay never, be granted in any event, was an absolute non-starter.

[20] For the latter reasons, the application was unanimously dismissed.

Appeal dismissed.

Reported by Afiq Mohamad Noor